

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-07/09-396
)
 Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families, Child Development Division (CDD) terminating her eligibility for a child care subsidy based on service need and denying her request for a variance of the regulation governing service need based upon self-employment. The issues are whether the petitioner's husband has a service need and, if not, whether the Commissioner abused his discretion in denying petitioner's variance request.

The parties have briefed the legal issues. The decision is based upon the legal arguments and supporting documentation.

FINDINGS OF FACT

1. The petitioner lives with her husband, their two minor children, and a foster child.
2. The petitioner and her husband adopted their two children as special needs children under Title IV-E. They are in the process of adopting the foster child placed in their home. The petitioner and her husband do not need to

meet the income guidelines for a child care subsidy but both petitioner and her husband need to demonstrate that they meet the criteria for a service need.

3. The petitioner works full-time and meets the service need criteria.

4. Petitioner's husband is self-employed in two businesses. He runs the family farm; his work includes planting crops and running equine hobbyist and boarding facilities. He also runs Northeast Sled Services (NESS), a seasonal business that presents antique tractor pulls and 4x4 truck pull at events. NESS is in its third year of operation.

5. Petitioner received a child care subsidy that ended on April 25, 2009. Petitioner's husband received a variance to the self-employment regulations for that period.

6. CDD found petitioner ineligible for a child care subsidy because they determined that petitioner's husband did not have a service need. CDD used the petitioner's 2008 tax records that showed a loss for both of her husband's self-employment businesses.

7. CDD made the following calculations based on the 2008 tax returns.

Petitioner's self-employment through NESS showed a loss of \$15,109. CDD added back the depreciation of \$7,260 leaving a loss of \$7,849.

Petitioner's self-employment as a farmer showed a loss of \$21,783. CDD added back the depreciation of \$15,124 leaving a loss of \$6,659.

8. On or about June 25, 2009, petitioner completed a variance request.

9. CDD denied petitioner's variance request on or about June 30, 2009.

10. Petitioner's request for fair hearing was filed on July 21, 2009 with the Board. In that request, petitioner detailed her husband's work hours and work activities.

11. The Commissioner completed his review on August 11, 2009. The Commissioner upheld the decision that petitioner's husband did not have a service need because his income did not generate income as provided under the applicable regulations. The Commissioner upheld the denial of the variance request because CDD was not granting any new requests for variances.

12. As part of her legal argument, petitioner submitted an affidavit from her husband dated September 30, 2009. Her husband detailed income of \$8,016 from the farm during the

period of April through June 2009¹ and net income of \$5,904 from NESS for the period of July through September 2009.

ORDER

The Department's decision is reversed and remanded.

REASONS

The Legislature promulgated a child care subsidy program. The purposes of this program are set out in 33 V.S.A. § 3512 as follows:

(a) A child care services program is established to subsidize, to the extent that funds permit, the costs of child care for families that need child care services in order to obtain employment, to retain employment . . .

(b) The subsidy authorized by this section shall be on a sliding scale basis. The scale shall be established by the commissioner, by rule, and shall bear a reasonable relationship to income and family size. The lower limit of the fee scale shall include families whose gross income is up to and including 100 percent of the federal poverty guidelines. The upper limit of the fee scale shall be neither less than 82.5 percent nor more than 100 percent of the state median income, adjusted for the size of the family. The scale shall be structured so that it encourages employment.

The commissioner has promulgated regulations entitled Child Care Financial Assistance Program Regulations (CCFA).

Pursuant to CCFA II.B.1 each caregiver in the child's home must have a service need. The crux in this case is

¹ This income in this period corresponds to the period when petitioner reapplied for her child care subsidy.

whether petitioner's husband meets the criteria for a service need as a self-employed person. The pertinent portion of CCFA II.B.1.b states:

Self Employment. Business activity by a primary caregiver, either in or out of the home, through which they earn an average monthly net income equivalent to the number of hours worked times the Vermont minimum wage.

The Department looked at the 2008 income tax records to determine whether petitioner's husband met the criteria for a service need based on self-employment. However, reliance on 2008 tax records can lead to an erroneous result when there has been a change in a caretaker's income from one year to the next. The Board has emphasized the need to look at actual income or the income a caregiver currently receives from self-employment. Fair Hearing Nos. 11,279 and V-05/09-245. The affidavit submitted from petitioner's husband indicates income meeting the requirements in CCFA Reg. II.B.1.b.

It is not clear from the record whether petitioner was informed that she could supply current income figures for her husband rather than 2008 tax records.² It is equally not clear from the record whether petitioner gave the Department

²The Department should consider adding language to their forms asking if there has been a change in self-employment income so that use of the prior year's tax records does not reflect actual income.

information about the change to her husband's income while they were deciding petitioner's eligibility. However, as part of this appeal, petitioner has now supplied information showing that her husband met the criteria for a service need under self-employment.

Accordingly, the Department's decision is reversed and the case is remanded for a determination of petitioner's child care subsidy. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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